



# Commonwealth of Kentucky

## CONTRACT

**DOC ID NUMBER:**

PON2 728 2100000335

Version: 1

Record Date: 08/31/20

Document Description: COVID 19 Serology Services C2669

Cited Authority: FAP111-43-00-03-STD  
PSC Sole Source or Emergency Exemption-Standard

Reason for Modification:

**Issuer Contact:**Name: Nina Anglin  
Phone: 502-564-7736  
E-mail: ninaf.anglin@ky.gov**Vendor Name:**LABORATORY CORPORATION OF AMERICA  
HOLDINGSLABCORP OF AMERICA HOLDINGS  
11751 Interchange Drive

Louisville KY 40229

**Vendor No.**

KY0036017

**Vendor Contact**Name: NO CONTACT IDENTIFIED  
Phone: 3364365394  
Email:

Effective From: 2020-09-01

Effective To: 2021-10-31

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
1		0.00000		Serology Services	\$0.000000	\$8,750,000.00	\$8,750,000.00

**Extended Description:**

Laboratory Corporation of America Holdings shall provide Sars-CoV-2 antibody testing to patients in the state of Kentucky as part of the Kentucky Department for Public Health seroprevalence survey. The survey, which will pursue Institutional Review Board approval, is seeking to gather data and insights on COVID-19 disease seroprevalence and spread throughout the state. The target sample size is up to 350,000 tests across all regions of the state.

100% Federal Funds CFDA 21.019

2nd Party Contact: Sherry Thomas  
Phone: 614-215-8224  
eMail: Thomas2@LabCorp.com1st Party Contact: Patricia Okeson  
Phone: 502-564-3970 x 4092  
eMail: Tricia.Okeson@ky.gov

Contract terms: September 1, 2020 through October 31, 2021

**Shipping Information:****Billing Information:**

	CHFS DPH Commissioners Office 275 E Main Street HS1GW-A  FrankfortKY40621
--	--

TOTAL CONTRACT AMOUNT:	\$8,750,000.00
------------------------	----------------

	<i>Document Description</i>	<i>Page 3</i>
2100000335	COVID 19 Serology Services C2669	

PERSONAL SERVICE CONTRACT FOR

SEROLOGY SURVEY

BETWEEN

THE COMMONWEALTH OF KENTUCKY

CABINET FOR HEALTH AND FAMILY SERVICES  
DEPARTMENT FOR PUBLIC HEALTH

AND

LABORATORY CORPORATION OF AMERICA HOLDINGS  
11751 Interchange Drive  
Louisville, KY 40229

This Personal Service Contract (PSC) is entered into, by and between the Commonwealth of Kentucky, Cabinet for Health and Family Services (CHFS), Department for Public Health (DPH) ("the Commonwealth" or CHFS) and LABORATORY CORPORATION OF AMERICA HOLDINGS ("LabCorp" or "the Contractor") to establish a contract for Seroprevalence Survey. The initial PSC is effective from September 1, 2020 through October 31, 2021.

The CHFS and the Contractor agree to the following:

**Section 1 - Scope of Contract**

**1.01-Scope of Work**

The Contractor shall provide Sars-CoV-2 antibody testing to patients in the state of Kentucky, who opt-in to the Kentucky Department for Public Health (DPH) seroprevalence survey (the "Survey"). The Survey, which will pursue Institutional Review Board (IRB) approval, is seeking to gather data and insights on COVID-19 disease seroprevalence and spread throughout the state. The target sample size is up to 350,000 tests across all regions of the state. Patient's consent will be obtained during a routine LabCorp patient specimen collection visit at either a LabCorp Patient Service Center(s) ("PSC") or, in instances where a LabCorp In-Office Phlebotomist is placed, in a physician's office that will authorize LabCorp to collect the necessary extra volume of blood required to perform the serology test under a separate order. (See workflow section below) The Survey's timeframe is 12 months and will likely be executed in 3-4 tranches. The Survey will utilize the Roche Sars-CoV-2 Total Antibody test (LabCorp test number 164068). In addition to the results, LabCorp will provide additional aggregated data and analysis in order to help CHFS understand how the disease impacts specific demographics, pre-existing conditions, etc. (See data section below.)

**1.02-Workflow**

The workflow for testing shall be as follows:

1. Joint Communication/Announcement is sent to physicians with LabCorp In-Office Phlebotomists regarding the program by CHFS.
  - a. This is needed to ensure the physicians with LabCorp In-Office Phlebotomists (IOP) understand why the IOPs are asking additional questions outside the normal clinical workflow.
2. A separate account number will be setup for the CHFS Kentucky Department for Public Health (DPH) for ordering the serology test.
  - a. Separate account number allows for easier tracking, billing, and data collection.
3. Patient is sent to a LabCorp IOP or LabCorp PSC for routine, physician-ordered patient specimen collection.

	<i>Document Description</i>	<i>Page 4</i>
2100000335	COVID 19 Serology Services C2669	

4. LabCorp staff (IOP or PST located at LabCorp PSC) will provide patient the Survey information sheet with consent form (attached hereto as Attachment A) to be signed by those patients who elect to opt-in to the CHFS's COVID-19 serology testing Survey.

a. Consent form will include up to four (4) additional questions as identified by the CHFS's epidemiologist.

b. The consent form will serve as the order form and be included with the specimen when sent into LabCorp for testing.

5. LabCorp staff will electronically enter two orders. They will first enter the original physician order followed by a separate order for the CHFS's COVID-19 serology Survey specimen.

a. LabCorp IOP/Patient Service Technician (PST) will collect all of the blood in a single venipuncture, with required tubes.

6. Orders will be separated, picked up by LabCorp couriers and sent to the LabCorp laboratory in Dublin, Ohio for LabCorp's processing and testing.

7. All results for the COVID-19 Serology Survey order will flow through LabCorp's secure, web-based resulting platform to the Commissioner of CHFS's DPH or their designee.

a. Patients are able to retrieve their results through the patient portal of the same web-based resulting platform.

b. For purposes of clarification, patient testing results for the original physician order will not be resulted to or shared with the CHFS. Only patient testing results for the COVID-19 Serology Survey will be shared with the Commissioner of CHFS's DPH or their designee.

8. Additionally, LabCorp will provide monthly aggregated reports as previously discussed with CHFS and as set forth in Section 1.03 of this Contract.

### **1.03-Reporting Requirements**

In conjunction with the testing performed for CHFS SARS-CoV-2 prevalence serology Survey, LabCorp will provide data and analysis in the following ways:

1. Positive cases will continue to be reported to the state health department in the preexisting manner.

2. All of the data generated from the Survey will be analyzed by LabCorp which includes patient level analysis. The goal of this dashboard is to see geographically based prevalence, and filter by multiple variables so that the DPH can quickly visualize and communicate insights.

#### **a. De-identification**

i. The patients in this data will be partially de-identified (removing the patient's name, Full address, and DOB), but will include the patient's 5-digit zip code of record, gender, age group, race, ethnicity, and COVID-19 LabCorp Testing History (as defined below in ii).

ii. The Testing History will be de-identified so that neither the ordering account, ordering provider information, nor location of the draw site will be introduced or known. The information that will be expressed as part of the Testing History includes: the draw date, test name, and test result. This de-identified Testing History will be presented in a graphical timeline way, with an explanatory key as well as individual tool-tip hovers that provide the testing result information as previously described. Testing performed as part of the Survey labeled as such. Testing performed outside of the Survey will be labeled as such.

#### **b. Reporting frequency**

i. The reports will be run every month for the duration of the Survey.

ii. The reports will only include the de-identified information that would result from the testing provided as part of the Seroprevalence Survey.



	<i>Document Description</i>	<i>Page 5</i>
2100000335	COVID 19 Serology Services C2669	

c. Additional state-level report

- i. Because diabetes is associated with increased risk for severe COVID-19, LabCorp will also provide a population report created using de-identified, patient-centric data (except for 5-digit zip code) from LabCorp testing, that shows diabetic prevalence and trends for the state of Kentucky for the last 12 months. This information will be integrated into the COVID-19 serology dashboard.
- ii. According to the needs of the CHFS's Survey, LabCorp may integrate the data from this Survey into the COVID-19 serology dashboard.

#### **1.04-Subcontractors**

Subcontractors will be not considered acceptable for this Contract.

#### **1.05-Term and Termination**

This Contract shall become effective on September 1, 2020 and shall continue in effect until October 31, 2021. This Contract may be terminated by either party, with or without cause, at any time, by giving the other party thirty (30) days prior written notice. In addition, this Contract may be terminated immediately by Contractor if one or more emergency use authorizations that authorize any testing services contemplated by this Contract are terminated or expire, or upon a declaration by a U.S. federal governmental authority of the end of the circumstances justifying the authorization of emergency use of in-vitro diagnostics for the detection and/or diagnosis of the virus, or antibodies relating to the virus, that causes COVID-19. Termination of this Contract shall not release the Commonwealth from its respective obligations to pay Contractor for any services performed prior to the effective date of termination.

#### **Section 2 - Entire Contract**

This Contract, including all Exhibits hereto, constitutes the entire agreement between CHFS and LabCorp regarding the services to be provided hereunder. Any agreements, promises, negotiations, or representations not expressly set forth in this Contract are of no force or effect. This Contract may be executed in any number of counterparts, each of which will be deemed to be the original, but all of which shall constitute one and the same document. Facsimile and electronic signatures shall also constitute original signatures for the purpose of this Contract.

#### **Section 3 - PRICING**

Services shall be reimbursed every ninety (90) days beginning September 1, 2020 not to exceed \$8,750,000 for the term of the contract.

Should actual serology testing volume fall beneath the anticipated amount of 350,000 citizens during the contract period, LabCorp would be paid as set forth below:

Up to 350,000 tests - \$8,750,000

Up to 300,000 test - \$8,250,000

Up to 250,000 tests- \$7,750,000

Up to 200,000 tests - \$7,250,000

Serology testing volume shall not exceed the anticipated amount of 350,000 citizens during the contract period.

The CHFS acknowledges that LabCorp may develop new technologies and/or new methodologies relating to the services during the term of this Contract. LabCorp will notify the Commonwealth when such technologies and/or methodologies are available and the fee associated with such technologies and/or methodologies.

#### **Section 4 - INVOICING**

Contractor shall submit invoices every ninety (90) days beginning September 1, 2020, not to exceed \$8,750,000 for the term of the contract, to the DPH Commissioner, 275 East Main Street, HS1GW-A, Frankfort KY 40621 in accordance with this section or electronically to [DPH.Payables@ky.gov](mailto:DPH.Payables@ky.gov). Services are to be billed as follows:

	<i>Document Description</i>	<i>Page 6</i>
2100000335	COVID 19 Serology Services C2669	

Invoices must be submitted no later than **thirty** (30) days after completion of the initial ninety (90) day period. Final invoice shall be submitted within thirty (30) days of contract end date.

The Contractor shall submit quarterly invoices in accordance with this section. Invoices shall contain two parts:

- A. Legislative Research Commission's Government Contract Review Committee Invoice Form; and
- B. Supporting documentation. (LabCorp invoice summary (de-identified) shall reflect the ninety (90) day testing period.)

Invoices that do not contain the requirements above will be rejected and sent back to the Contractor for re-invoicing.

## **Section 5 - CHFS STANDARD TERMS AND CONDITIONS**

### **5.00- General Provisions**

#### **5.00.01-Headings**

The section headings in this Contract are for reference and convenience only and shall not have any effect on the construction or legal effect of this Contract.

#### **5.00.02-Assignment**

This Contract shall be binding upon and inure to the benefit of the respective legal successors of the Parties. However, neither this Contract nor any rights or obligations hereunder may be assigned, in whole or in part, without the prior written consent of either party.

#### **5.00.03-Beginning of Work**

This Contract is not effective and binding until approved by the Secretary of the Finance and Administration Cabinet and filed with the Legislative Research Commission's Government Contract Review Committee. The Contractor shall not commence any billable work until a valid Contract has been fully executed. This Contract, including the components referenced in Section 2, shall represent the entire agreement between the parties. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this Contract.

#### **5.00.04 Changes and Modifications to the Contract**

Pursuant to 200 KAR 5:311, no modification or change of any provision in the Contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the CHFS, and incorporated as a written amendment by CHFS prior to the effective date of such modification or change. Modification shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet, or their authorized designee, and the LRC Government Contract Review Committee. Memoranda of Understanding, written clarification, and/or other correspondence shall not be construed as amendments to the Contract.

#### **5.00.05 Notices**

Unless otherwise instructed, all notices, consents, and other communications required and/or permitted by the Contract shall be in writing. After the award of the Contract, all communications of a contractual or legal nature are to be made to the Agency Contact.

For LabCorp or the Contractor:

Laboratory Corporation of America Holdings  
6370 Wilcox Road  
Dublin, Ohio 43016  
Attention: Contracts Administrator

with a copy to:

	<i>Document Description</i>	<i>Page 7</i>
2100000335	COVID 19 Serology Services C2669	

Laboratory Corporation of America Holdings  
531 South Spring Street  
Burlington, North Carolina 27215  
Attention: Law Department

For the Commonwealth or CHFS:

Cabinet for Health and Family Services  
Department for Public Health  
275 East Main Street, HS1GS-A  
Frankfort, KY 40621

#### **5.00.06 No Required Use of Contract**

This Contract does not guarantee any minimum use of services. The CHFS reserves the right to leave all, or any portion, of the contract unused and/or to establish other contracts for additional and/or related services.

CHFS may undertake or award other contracts for additional or related work, services, supplies, or commodities, and the Contractor shall fully cooperate with such other Contractors and CHFS employees. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other Contractor or by CHFS employees.

#### **5.00.07 Severability**

It is understood and agreed by the Parties that if any part, term, or provision of this Contract is held by the courts to be illegal or in conflict with any law of the Commonwealth of Kentucky or of the United States of America, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular part, term, or provision held to be invalid, if the remainder of the Contract is capable of performance.

#### **5.00.08 Indemnification and Warranties**

The Contractor shall indemnify and hold harmless CHFS and its agents, representatives, officers, directors, employees, insurers, successors, and assigns from and against any and all third party expenses, costs (including reasonable attorneys' fees), causes of action, liability, loss and/or damages suffered or incurred by CHFS arising under or in connection with this Contract to the extent that such costs and liabilities are proximately caused by the negligence or willful misconduct of Contractor.

Provided, however, in the event the Contractor is an agency of the CHFS, the state agency's liability shall be governed instead by KRS 49.010 through KRS 49.180 and limited to any award from the Kentucky Claims Commission up to the jurisdictional amount.

A. Contractor warrants to CHFS that neither contractor nor any of its affiliates or employees have been debarred, suspended, declared ineligible or excluded from Medicare, Medicaid, Tricare or any other federal or state government program.

B. Contractor warrants to CHFS that all services provided hereunder shall, as applicable, be in accordance with established and recognized clinical laboratory testing procedures and shall be provided with reasonable care in accordance with applicable federal, state and local laws.

C. Except as set forth in this section 5.00.08, Contractor makes no, and expressly disclaims any, representations or warranties of any kind with respect to the services provided under this Contract (including the exhibits or attachments), such as any express or implied warranties of merchantability, infringement or fitness for a particular purpose and implied warranties arising from course of dealing or course of performance.

	<i>Document Description</i>	<i>Page 8</i>
2100000335	COVID 19 Serology Services C2669	

D. In no event will a party be liable to the other party for any indirect, incidental, consequential, punitive, special or exemplary damages (even if such party has been advised of the possibility of such damages), arising from this Contract, including, but not limited to, loss of revenue or anticipated profits. In no case shall Contractor's total cumulative liability for a claim of any kind, whether based on contract, tort, negligence, indemnity or otherwise, for any loss, liability or damage arising out of or related to this Contract or the services exceed total fees paid to Contractor under this Contract (including, for clarity, the exhibits) during the twelve (12)-month period ending on the date of the action underlying such claim. Notwithstanding the foregoing, the limitations of liability in this section 5.00.08.d. shall not apply to the extent such limitations of liability are not permitted by applicable law.

E. CHFS understands and acknowledges that there are many unknowns concerning covid-19, and that testing for covid-19 is being performed pursuant to an emergency use authorization, and that there are inherent limitations to this testing. CHFS acknowledges that, like all diagnostic testing, Covid-19 PCR and Serology testing carry inherent limitations, such as inaccuracy and time limitations. For example, for a variety of reasons, such testing may produce false positive results, false negative results, or samples may be insufficient to produce a result.

#### **5.00.09 Sovereign Immunity**

The Parties expressly agree that no provision of this Contract constitutes a waiver by CHFS of any immunities from suit or from liability that CHFS may have by operation of law.

#### **5.00.10 Force Majeure**

Neither Contractor nor CHFS shall be liable for any failure or inability to perform their respective obligations under this Contract due to any cause beyond the reasonable control of the non-performing party, including but not limited to acts of God, regulations of laws of any government or agency (including government or agency mandated restriction or redistribution of supplies and/or personal protective equipment ("PPE")), acts of war or terrorism, acts of civil or military authority, fires, floods, accidents, pandemics (including supply, PPE and labor shortages caused therefrom or as a result thereof), quarantine restrictions, unusually severe weather, explosions, earthquakes, strikes, labor disputes, loss or interruption of electrical power or other public utility, freight embargoes or delays in transportation, or any similar or dissimilar cause beyond its reasonable control (collectively, a "Force Majeure Event"). If a party's non-performance under this Section 5.00.10 extends for fourteen (14) days or longer, the party affected by such non-performance may terminate this Contract by providing written notice thereof to the other party.

#### **5.00.11 Maintenance of Insurance**

During the term of this Contract, the Contractor shall maintain and shall require any Subcontractor to maintain workers' compensation insurance, employer liability insurance, and such other liability insurance as reasonably necessary in the Contractor's business judgment to provide adequate coverage against losses and liabilities attributable to the respective acts or omissions of the Contractor and the Subcontractor(s) in the performance of this Contract. The Contractor shall provide or cause to be provided and shall require any Subcontractor to provide or cause to be provided evidence of such coverage upon request.

To the extent that the Contractor and any Subcontractor are not self-insured, each shall, in any event, name CHFS as an additional insured on any policy of coverage, with the exception of the workers' compensation and any reinsurance. The Contractor and any Subcontractor shall notify CHFS of the evidence of insurance coverage within five (5) business days of coverage. Notice shall be sent in writing to the Department.

CHFS shall not be responsible for any premiums or assessments on the policy or policies held by the Contractor or any Subcontractor under this Contract. CHFS may, at its sole option, pay one or more premiums, if it decides that to do so would be in the best interest of the CHFS. Should CHFS

	<i>Document Description</i>	<i>Page 9</i>
2100000335	COVID 19 Serology Services C2669	

exercise this option, it shall be fully reimbursed by the Contractor, either by the Contractor directly or by an offset against future payments.

The Certificate of Insurance for any policy other than self-insurance or any reinsurance must require that the insurer shall not cancel the coverage without thirty (30) days prior written notice to CHFS.

The Contractor shall notify CHFS within five (5) business days of any cancellation or interruption of the Contractor or Subcontractor's insurance coverage. CHFS shall require in any subcontracts that the Subcontractor provide such notice within five (5) business days to the Contractor and CHFS. The Contractor shall assure and require that any Subcontractor assure that insurance is in effect at all times during the life of this Contract. If their respective insurance coverage expires at any time during the term of this Contract, the Contractor and any Subcontractor shall provide at least thirty (30) calendar days prior to the expiration date, to the extent possible, a new Certificate of Insurance evidencing coverage as provided herein for not less than the remainder of the term of this Contract.

#### **5.00.12 Licensure, Certification, and Registration**

The Contractor shall:

1. Ensure that all appropriate licenses, registrations, and/or certifications necessary are maintained at all times to the extent such are required for performance under this Contract;
2. Ensure that it has readily accessible copies of licenses, registration, and/or certifications necessary; and
3. Produce copies of any required license, registration, and/or certification at the reasonable, written request of CHFS or the CHFS's designee.

#### **5.00.13 Permits, Licenses, Taxes, and Laws**

The Contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all federal, state, and local governments in which work under this Contract is performed.

To the extent required by law, the Contractor shall pay any sales, use, personal property and income taxes arising out of this Contract and the transaction contemplated hereby. Any other taxes levied upon this Contract, the transaction, or the equipment or services delivered pursuant hereto shall be borne by the Contractor.

Contractor shall be responsible for all applicable Federal (including FICA), State and Local tax withholdings.

#### **5.00.14 Legal Proceedings**

Except as specifically disclosed in writing to CHFS by the Contractor, prior to the date of this Contract, the Contractor certifies there are no suits, investigations, or other proceedings pending or threatened against the Contractor or any subcontractor that would have a material effect on the Contractor's ability to perform under this Contract, or on Subcontractors ability to perform under their respective subcontracts, if applicable. Further, the Contractor shall use its best efforts to notify CHFS within five business days, and in writing within seven (7) business days, of all suits, investigations, or other proceedings involving Contractor related to this Contract. The Contractor shall send written notice to the Department.

#### **5.00.15 No Grant of Employment or Agency**

Nothing in this Contract shall be construed, in any way, as granting to any individual providing services under the Contract any of the claims, privileges, or rights established or recognized under [KRS Chapter 18A](#) or [KAR Title 101](#).

At no point shall any individual providing services under this Contract be considered a full-time or part-time employee of CHFS, for any purpose, including but not limited to unemployment, taxes, withholding, health insurance, liability, retirement, Workers' Compensation, vacation, sick or other leave, the Family Medical Leave Act, accrued benefits, evaluations, or any other purpose. At all

	<i>Document Description</i>	<i>Page 10</i>
2100000335	COVID 19 Serology Services C2669	

times, any such individual shall be considered and deemed to be an employee, volunteer, or independent contractor of the Contractor.

In no event shall any employee, volunteer, or independent contractor of the Contractor be deemed to be a third-party beneficiary of this Contract or an agent or an employee of the CHFS.

**5.00.16 CHFS Discrimination Prohibited in Service Provision (Because of Race, Religion, Color, National Origin, Sex, Disability, Age, Political Beliefs or Reprisal or Retaliation for prior Civil Rights Activity or other Federal, State, or Local Protected Class)**

Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against anyone applying for or receiving assistance or services based on race, religion, color, national origin, sex, disability, age, political beliefs or reprisal or retaliation for prior civil rights activity or any other protected class identified in federal, state or local laws. The Contractor agrees to comply with the provisions of the [Kentucky Civil Rights Act](#), the Americans with Disabilities Act of 1990 as Amended (ADA), , Section 1557 of the Patient Protection and Affordable Care Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, as applicable, and all other applicable federal, state and local regulations relating to prohibiting discrimination.

2. The Contractor will take action to ensure that service applicants and recipients are given services in the same manner, based on eligibility, and are not based on membership in a protected class: denied aid, care, services, or other benefits provided under this Contract; subjected to segregation or different treatment in any matter related to receipt of assistance; restricted in any way in the enjoyment of any advantages or privileges enjoyed by others receiving similar services; given different treatment in determining eligibility; or meeting other requirements or conditions that must be met to receive benefits.

3. The Contractor agrees to post in conspicuous places at Contractor PSC's, available to program or service applicants or recipients, notices setting forth the provisions of this non-discrimination clause.

4. In all program or service solicitations or advertisements placed by or on behalf of the Contractor, the Contractor will state that they will not discriminate against anyone applying for or receiving assistance or services based on race, religion, color, national origin, sex, disability, age, political beliefs, or reprisal or retaliation for prior civil rights activity, or any other protected class identified in federal, state, or local laws.

5. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated or suspended in whole or in part, and such other sanctions that may be imposed and remedies invoked as provided in or as otherwise provided by law.

6. In compliance with the prohibition against Disability discrimination and in compliance with the implementing guidance for the Americans with Disabilities Act issued by the Department of Justice, the Contractor agrees to provide, free of charge, appropriate accommodations for applicants or recipients with disabilities, including auxiliary aids and services for persons with disabilities who require alternative means of communication.

7. In compliance with the prohibition against National Origin discrimination and, by extension discrimination based on Limited English Proficiency (LEP), the Contractor agrees to provide meaningful language assistance measures free of charge to program or service applicants or recipients with Limited English Proficiency. The language services shall:

- a. Be consistent with the general guidance document issued by the Department of Justice, which sets forth the compliance standards recipients of federal financial assistance must follow to ensure that LEP persons have meaningful access to the program's services and activities;

	<i>Document Description</i>	<i>Page 11</i>
2100000335	COVID 19 Serology Services C2669	

- b. Have a method of identifying LEP individuals; and
- c. Provide language assistance measures (e.g., oral interpretation and written translation services; training of staff; note to LEP persons of availability of language access assistance; monitoring compliance, etc.).

## **5.01- Contract Performance**

### **5.01.01 Service Delivery Requirements**

All services provided by the Contractor under the terms and conditions of this Contract shall be delivered in accordance with:

- 1. All applicable federal and state statutes and regulations as they are currently in effect;

### **5.01.02 Total Amount of Funds and Budget Revisions**

CHFS shall have the right to recoup the amount of any overpayment, regardless of the reason for the overpayment. Any reconciliation or settlement of fund balances contained in the Summary Line Item Section of this Contract shall be negotiated between CHFS and the Contractor and determined as soon as feasible before the end of the scope of work as set forth under the Contract.

The Contractor shall not request a budget revision within the last sixty (60) days of the contract period.

### **5.01.03 Indirect Cost**

Except as otherwise authorized by this Contract, no indirect costs shall be reimbursed.

### **5.01.04 Financial Record Retention**

The Contractor agrees to maintain all records pertaining to this Contract for a period of not less than three (3) years after all matters pertaining to this Contract (e.g., audit, settlement of audit exceptions, disputes, etc.) are resolved in accordance with applicable federal and/or state laws, regulations, and policies (except as may otherwise be specified in this Contract).

### **5.01.05 Confidential Information**

The Contractor shall comply with the state and federal rules and regulations governing access to and use of information and data provided by CHFS or collected by the Contractor, and will use such information or data only for those purposes expressly delineated, defined, and authorized in this Contract or for the performance of services. The Contractor agrees to ensure that all confidential information (as defined below) and data shall remain confidential.

Furthermore, during the course of the Contract and any renewals thereof, CHFS and LabCorp may have access to certain confidential and proprietary business or medical information about the other, including information concerning: physicians, patients and staff, practice patterns, medical services, fees, billing, finances, management systems, business plans or prospects and employee relations ("Confidential Information"). Each party agrees that both during the initial term, and any additional terms, of the Contract and for a period of two (2) years after the expiration or termination of the Contract for whatever reason, the receiving party and its employees and agents shall hold all such Confidential Information in the strictest confidence, and shall not disclose, display, transfer, sell, publish, or otherwise make available to any other person or entity any such Confidential Information, without the prior written consent of the disclosing party, except as may be specifically required by law. The receiving party (and its employees and agents) shall protect such Confidential Information in a manner consistent with the usual manner in which the most confidential business and professional information of its own is protected.

The parties agree that all Confidential Information regarding the other party and including all Confidential Information obtained from the other party's personnel or from any visit to the other party's facilities, is and shall remain Confidential Information and the property of the disclosing party, except for any of such information which:

	<i>Document Description</i>	<i>Page 12</i>
2100000335	COVID 19 Serology Services C2669	

- (i) was known to the receiving party prior to its disclosure hereunder;
- (ii) is disclosed to the receiving party by a third person who is not known to be subject to a confidentiality obligation;
- (iii) is or hereafter becomes a part of the public domain through no fault of the receiving party or the receiving party's personnel; or
- (iv) was independently developed by the receiving party.

Notwithstanding the foregoing or any other provision to the contrary herein, the receiving party may retain one (1) copy of the Confidential Information in the receiving party's Law Department for archive purposes, and the receiving party shall not be required to destroy or delete copies that have become embedded in its electronic storage systems through routine backup processes.

For the purpose of this Contract, Confidential Information shall not include treatment data generated by LabCorp in the performance of services.

Any dissemination of information about projects funded and the scope of work described in the terms and conditions of this Contract, must be fully documented and reviewed by both parties, specifically for CHFS, CHFS's project manager, before any representation, electronic or otherwise, of projects, their funding sources, use of data, or data analyses may be posted to a web page or otherwise published. Furthermore, except as expressly permitted by this Contract or as otherwise required by law, neither party shall make, publish or distribute, press release, advertising, marketing material, promotional material or any other disclosure relating to this Contract that names the other party, without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed. For purposes of clarification, LabCorp acknowledges the potential use of and permits for their name to be mentioned as the reference clinical laboratory performing the testing for this Survey during press conferences held by the State of Kentucky. CHFS shall provide LabCorp with a pre-publication copy of any report, manuscript, publication or form of marketing material recognizing LabCorp's participation in the program/Survey related to this Contract or otherwise identifying LabCorp for approval (which approval shall not be unreasonably withheld or delayed), in each case at least thirty (30) days before its submission for publication.

The Contractor shall permit reasonable access to industry standard books and records, as allowable by applicable law, upon written request, provided such access does not interrupt Contractor's business operations and does not put the Contractor out of compliance with other requirements of Contractor, to authorized personnel of the Cabinet, the Office of the Attorney General, the Office of the Auditor of Public Accounts, and any representative of a government funding agency authorized to review records for audit or investigation purposes to its current policies and procedures for ensuring compliance with these confidentiality requirements, the confidentiality agreements with its personnel, and Subcontractor confidentiality assurances.

The foregoing will not apply to:

1. Information that the CHFS has released in writing from being maintained in confidence;
2. Information that at the time of disclosure is in the public domain by having been printed and published and available to the public in libraries or other public places where such data is usually collected; or
3. Information that, after disclosure, becomes part of the public domain as defined above, through no act of the Contractor; or
4. Information required to be disclosed by law.

The Contractor shall have an appropriate agreement with its Subcontractors extending these confidentiality requirements to all Subcontractors' employees.



	<i>Document Description</i>	<i>Page 13</i>
2100000335	COVID 19 Serology Services C2669	

#### **5.01.06 HIPAA Confidentiality Compliance**

The Contractor and the CHFS agree to abide by the “HIPAA Privacy Rule,” [45 CFR Parts 160 and 164](#), established under the Health Insurance Portability and Accountability Act, Public Law 104-191 ([42 USC 1320d](#)). Furthermore, LabCorp is a Covered Entity under HIPAA and complies with HIPAA requirements related to the privacy and security of PHI (defined below). LabCorp uses and discloses PHI, including test results, in accordance with applicable law and LabCorp’s Notice of Privacy Practices, which are available to CHFS upon request. LabCorp also complies with all other applicable federal and state laws regarding data privacy and security of information that falls under the definition of “protected health information” under HIPAA (“PHI”), and all information that is not included within the definition of PHI under HIPAA (“Non-HIPAA Personal Information”), including but not limited to, compliance with the California Consumer Privacy Act’s (“CCPA”) requirements for Non-HIPAA Personal Information. CHFS acknowledges and agrees that the CCPA does not apply to information that falls under the definition of “PHI” under HIPAA or to information that is de-identified in accordance with HIPAA. For clarity, LabCorp will handle PHI, including demographic information relating to patients and test results, in accordance with HIPAA, and, in addition to the other uses and disclosures permitted by HIPAA and LabCorp’s Notice of Privacy Practices, LabCorp may provide test results and other data to governmental authorities as required or requested and may de-identify and aggregate PHI. CHFS acknowledges and agrees that it has no ownership interest in the patient’s test results pursuant to the services. As between CHFS and LabCorp, test results are the property of LabCorp.

#### **5.01.07 Research Project Approval and Institutional Review Board Requirements**

Any proposed research project undertaken under the terms and conditions of this Contract shall follow the procedures and protocols established under [920 KAR 1:060](#) that provide for CHFS review of research projects supported or funded in whole or in part through CHFS. If the proposed research project involves human subjects, it shall comply with federal regulations [45 CFR 46](#) and the requirements of CHFS’s Institutional Review Board for the Protection of Human Subjects, which CHFS is required to establish and maintain to protect the rights and welfare of human subjects of research conducted or sponsored by CHFS. The project manager assigned by CHFS will provide all documentation and protocols for review and approval by the CHFS Institutional Board. No research may begin until such time as the Board reviews and approves the project.

#### **5.01.08 Performance and Evaluation**

CHFS may complete a Performance Evaluation (PE) once a year to document contract performance. PE documents will be entered into the Commonwealth’s electronic financial system (eMARS). Performance documented by PE may be considered when making future awards. To obtain a copy of the PE documents completed for this Contract, contact the Contract Specialist listed on page 1.

#### **5.01.09 Business Continuity, Disaster Recovery, and Information Security Requirements**

Upon request, the Contractor shall provide a summary of Contractor’s Business Continuity Plan.

The Contractor shall:

- A. Submit evidence of Contractor’s Information Security Policies.
- B. Review the Information Security Policies at a minimum, or in the event of a significant system change (as defined by the Centers for Medicare and Medicaid Services (CMS)), update as needed.
- C. Reasonably ensure, to the extent commercially and technically feasible, that all software and hardware components used to deliver this solution are being supported by the Original Equipment Manufacturer (OEM) of that particular software or hardware and all other technologies used are uncompromised/secure.

	<i>Document Description</i>	<i>Page 14</i>
2100000335	COVID 19 Serology Services C2669	

D. Ensure access to all sensitive information (such as Personally Identifiable Information [PII], Protected Health Information [PHI], etc.) is restricted to vetted United States personnel only.

E. Ensure all data, including backups and archives, are maintained at all times within the contiguous United States. All sensitive data, as defined by CMS, shall be encrypted in-transit and at rest at all times, to the extent commercially and technically feasible.

F. The Contractor shall notify their CHFS point of contact and CHFS Information Security on all confirmed Security incidents within seventy-two (72) hour of their confirmation.

G. All databases/spreadsheets containing sensitive data such as PII and PHI shall be monitored for any breaches. The Contractor shall set up alerts based on triggers that fire when a predetermined threshold is reached.

H. Cyber Insurance: The Contractor shall hold Cyber Insurance policies to cover the business liability that includes, but is not limited to, costs of cyber security breaches, unauthorized data disclosure, data tampering, data loss, credit monitoring, system restoration/repair, follow-on lawsuits, and other damages during the entire life of this contract, including any renewals. While it is prudent to own Cyber Insurance, it is not a substitute for a robust security program.

I. No production data shall exist in any other environment other than production. All non-production environments shall be designed to use data masking routines to transform personal and confidential data, while retaining its contextual meaning and referential integrity. The authorized CHFS management staff and CHFS Security shall approve any exceptions.

J. For purposes of this Section, "Security Incident" means the successful unauthorized processing of CHFS data.

#### **5.01.10 Protection of Personal Information Security and Breach Investigation Procedures and Practices Act**

Contractors that receive Personal Information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, [KRS 61.931](#), [KRS 61.932](#), [KRS 61.933](#), and [KRS 61.934](#), (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

The Contractor hereby agrees to reasonably cooperate with the CHFS in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The Contractor shall notify as soon as possible, but not to exceed seventy-two (72) hours, the contracting agency, the Commissioner of the Kentucky State Police, the Auditor of Public Accounts, and the CHFS Office of Technology of a determination of or knowledge of a confirmed breach, unless the exception set forth in [KRS 61.932\(2\)\(b\)2](#) applies and the Contractor abides by the requirements set forth in that exception. If the agency is a unit of government listed in [KRS 61.931\(1\)\(b\)](#), the Contractor shall notify the Commissioner of the Department of Local Government in the same manner as above. If the agency is a public school district listed in [KRS 61.931\(1\)\(d\)](#), the Contractor shall notify the Commissioner of the Department of Education in the same manner as above. If the agency is an educational entity listed under [KRS 61.931\(1\)\(e\)](#), the Contractor shall notify the Council on Postsecondary Education in the same manner as above. Notification shall be in writing on a form mutually agreed to by the parties.

The Contractor hereby agrees to undertake a prompt and reasonable investigation of any confirmed breach as required by [KRS 61.933](#).

Upon conclusion of an investigation of a confirmed security breach of Personal Information as required by [KRS 61.933](#), the Contractor hereby agrees to an apportionment of the costs of the

	<i>Document Description</i>	<i>Page 15</i>
2100000335	COVID 19 Serology Services C2669	

notification, investigation, and mitigation of the confirmed security breach to the extent such confirmed security breach was deemed to be caused by Contractor. For purposes of clarity, if Contractor was not the cause of any such confirmed security breach, Contractor will not be responsible for any associated costs for notification, investigation, or mitigation.

To the extent it is applicable and feasible, which includes but not limited to being inconsistent with Contractor's own internal policies in accordance with [KRS 61.932\(2\)\(a\)](#) the Contractor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the CHFS Office of Technology:

<http://technology.ky.gov/ciso/Pages/InformationSecurityPolicies,StandardsandProcedures.aspx>

#### **5.01.11-Staffing**

Any individual providing services under this Contract must not be included on any formal registry or listing that is required by law and which relates to abuse, neglect, sexual offenses, or other inappropriate practices or which, in any way, prohibits their employment for or performance of the services required herein. In the event of any such listing or registration, the Contractor shall promptly notify CHFS.

Any individual providing services under this Contract must not be prohibited or debarred from providing services or participating in any state or federal governmental program, including but not limited to the Medicare and Medicaid programs. In the event of any such prohibition or debarment, the Contractor shall promptly notify CHFS.

### **5.02- Breach and Contract Termination**

#### **5.02.01 Remedies for Breach**

With respect to Contractor, the parties agree that in the event of breach of contract by CHFS, Contractor can pursue any remedy to the extent allowable by applicable law. It is agreed by the Parties that in the event of breach of contract by the Contractor, CHFS may pursue any remedy available to it pursuant to this Contract, or to the provisions of [KRS Chapter 45A](#), or any remedy that is available to it by law. The remedies available to CHFS may be invoked without regard to the existence of any other available remedy, and may include the enforcement of any holdback provision or payment of any specified liquidated damages by the Contractor to CHFS for noncompliance as provided for in this Contract.

### **5.03- Miscellaneous Provisions**

#### **5.03.01 Advertising Award Prohibition**

The Contractor shall not refer to the Award of Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the CHFS.

#### **5.03.02 Bankruptcy**

In the event the Contractor becomes the subject debtor in a case pending under the Federal Bankruptcy Code, the CHFS's right to terminate this Contract may be subject to the rights of a trustee in bankruptcy to assume or assign this Contract. The trustee shall not have the right to assume or assign this Contract unless the trustee:

1. Promptly cures all defaults under this Contract;
2. Promptly compensates the CHFS for the monetary damages incurred as a result of such default; and
3. Provides adequate assurance of future performance, as determined by the CHFS.

#### **5.03.03 Code of Ethics**

The Contractor and all professional personnel who may provide services under this Contract or any subcontract with the Contractor shall be familiar with and abide by any and all code of

	<i>Document Description</i>	<i>Page 16</i>
2100000335	COVID 19 Serology Services C2669	

ethics or conduct as designated by CHFS that have been established by a national or regional association and are generally recognized as being applicable. Failure of the Contractor to abide by the applicable code of ethics shall result in the immediate termination of the contract.

Notwithstanding any other provisions of this Contract, in the event that compliance by LabCorp with any of the policies or procedures of CHFS would cause LabCorp to be in non-compliance with its own policies and procedures, LabCorp and CHFS shall negotiate in good faith to determine a course of action and to resolve the inconsistencies between their respective policies and procedures.

#### **5.03.04 Scientific Misconduct**

The Contractor shall set out a procedure for the inquiry, investigation, appeal, and disposition of complaints alleging misconduct in activities involving any and all research projects funded, in whole or in part, with federal funds included in this Contract, and as authorized under the Public Health Services research grants. Such policies and procedures shall be in accordance with the provisions of 42 CFR Part 50 and [900 KAR 1:080](#), as amended, and shall be made available, reasonable, written upon request, to CHFS. In the event any activity involves services under this Contract, the Contractor shall promptly report to CHFS any activity reported to the Contractor under these terms and conditions. Notice shall be sent in writing to the Department.

#### **5.03.05 Intellectual Property**

The Contractor agrees that any formulae, methodology, or other reports and compilations of data provided by the CHFS to the Contractor for the purposes of meeting the terms and conditions of this Contract shall be the exclusive property of CHFS, unless the specific ownership of any proposed or developed formulae, methodology, or other reports and compilations of data is otherwise identified in any Attachment(s). The Contractor further agrees that any formulae, methodology, other reports and compilations of data prepared or produced by the Contractor during the course of work pursuant to this Contract (the "Materials") shall be the exclusive property of the Contractor and if feasible and allowed by applicable law, may be made available, only after the Contractor has approved of such sharing, to CHFS use upon reasonable, written request and without charge.

Any use of these Materials other than for the purposes of meeting the terms and conditions of this Contract must be reviewed and approved in writing by the Contractor.

If any of these Materials are included in any publication, training materials, or presentations, or for any other type of release of the Materials other than for the purposes of meeting the terms and conditions of this Contract, appropriate credit for the funding source must be given.

#### **5.03.06 Certification Regarding Drug-Free Workplace**

The Contractor hereby certifies that it will, or will continue to, provide a drug-free workplace in accordance with 2 CFR Part 182. The Contractor shall at a minimum:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited from the Contractor's workplace and specifying actions that will be taken against employees for violation of such prohibition;
2. Establish an ongoing drug-free awareness program to inform employees about:
  - a. The dangers of drug abuse in the workplace;
  - b. The Contractor's policy of maintaining a drug-free workplace;
  - c. Available drug counseling, rehabilitation, and employee assistance programs; and
  - d. The penalties that may be imposed upon employees for drug abuse violation.

#### **5.03.07 Business Associate Agreement**

A Business Associate Agreement has been determined unnecessary for this Agreement.

### **Section 6 - FEDERAL REQUIREMENTS**

If federal funds are utilized, the Contractor is responsible for complying with all provisions of [2 CFR Part 200, Appendix II](#), regarding Contract provisions for non-federal entity Contracts under federal award.

	<i>Document Description</i>	<i>Page 17</i>
2100000335	COVID 19 Serology Services C2669	

The following terms shall apply:

## **6.00-Certain Provisions Contained Within 2 CFR, Part 200, Appendix II**

### **6.00.01 Clean Air Act and Federal Water Pollution Control Act**

The Contractor and Subcontractors shall agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, [42 U.S.C. 7401](#) et seq., and the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251](#) et seq. Violations shall be reported to the HHS and the appropriate Regional Office of the Environmental Protection Agency.

### **6.00.02 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, Lower Tier Covered Transactions**

In accordance with [Federal Acquisition Regulation 52.209-5](#), the Contractor shall certify, by signing the Solicitation, that to the best of its knowledge and belief, the Contractor and/or its Principals is (are) not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency.

For the purposes of this certification, "Principals," means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of subsidiary, division, or business segment, and similar positions.

The Contractor shall be compliant with [2 CFR 180](#) at the time of award and throughout the contract period.

### **6.00.03 Certification of Lobbying Activities**

The Contractor shall disclose any lobbying activities in accordance with [Section 1352, Title 31, U.S. Code](#). The Contractor certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit [Standard Form-LLL](#), "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section [1352, Title 31, U.S. Code](#). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

(Rev 5/06/20)

## **Endnotes**

	<i>Document Description</i>	<i>Page 18</i>
2100000335	COVID 19 Serology Services C2669	



	<i>Document Description</i>	<i>Page 19</i>
2100000335	COVID 19 Serology Services C2669	

**Personal Service Contract Standard Terms and Conditions  
Revised January 2020**

**Whereas**, the first party, the state agency, has concluded that either state personnel are not available to perform said function, or it would not be feasible to utilize state personnel to perform said function; and  
**Whereas**, the second party, the Contractor, is available and qualified to perform such function; and  
**Whereas**, for the abovementioned reasons, the state agency desires to avail itself of the services of the second party;

**NOW THEREFORE**, the following terms and conditions are applicable to this contract:

**1.00 Effective Date:**

This contract is not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the Legislative Research Commission, Government Contract Review Committee ("LRC"). However, in accordance with KRS 45A.700, contracts in aggregate amounts of \$10,000 or less are exempt from review by the committee and need only be filed with the committee within 30 days of their effective date for informational purposes.

KRS 45A.695(7) provides that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary.

**2.00 Renewals:**

Upon expiration of the initial term, the contract may be renewed in accordance with the terms and conditions in the original solicitation. Renewal shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet or his authorized designee and the LRC Government Contract Review Committee in accordance with KRS 45A.695 and KRS 45A.705, and contingent upon available funding.

**3.00 LRC Policies:**

Pursuant to KRS 45A.725, LRC has established policies which govern rates payable for certain professional services. These are located on the LRC webpage <https://apps.legislature.ky.gov/moreinfo/Contracts/homepage.html> and would impact any contract established under KRS 45A.690 et seq., where applicable.

**4.00 Choice of Law and Forum:**

This contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Any action brought against the Commonwealth on the contract, including but not limited to actions either for breach of contract or for enforcement of the contract, shall be brought in Franklin Circuit Court, Franklin County, Kentucky in accordance with KRS 45A.245.

**5.00 EEO Requirements:**

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding \$500,000. The contractor shall comply with all terms and conditions of the Act.

**6.00 Cancellation:**

The Commonwealth shall have the right to terminate and cancel this contract at any time not to exceed thirty (30) days' written notice served on the Contractor by registered or certified mail.

**7.00 Funding Out Provision:**

The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall provide the Contractor thirty (30) calendar days' written notice of termination of the contract due to lack of available funding.

	<i>Document Description</i>	<i>Page 20</i>
2100000335	COVID 19 Serology Services C2669	

#### **8.00 Reduction in Contract Worker Hours:**

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the agreement will be reduced by the amount specified in that document. If the contract funding is reduced, then the scope of work related to the contract may also be reduced commensurate with the reduction in funding. This reduction of the scope shall be agreeable to both parties and shall not be considered a breach of contract.

#### **9.00 Authorized to do Business in Kentucky:**

The Contractor affirms that it is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any contract awarded.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof.

#### **Registration with the Secretary of State by a Foreign Entity:**

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by KRS 14A.9-010 to obtain a certificate of authority to transact business in the Commonwealth ("certificate") from the Secretary of State under KRS 14A.9-030 unless the person produces the certificate within fourteen (14) days of the bid or proposal opening. Therefore, foreign entities should submit a copy of their certificate with their solicitation response. If the foreign entity is not required to obtain a certificate as provided in KRS 14A.9-010, the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within KRS 14A.1-070.

-  
-

**For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within the time frame identified above, the foreign entity's solicitation response shall be deemed non-responsive or the awarded contract shall be cancelled.**

Businesses can register with the Secretary of State at <https://onestop.ky.gov/Pages/default.aspx>

#### **10.00 Invoices for fees:**

The Contractor shall maintain supporting documents to substantiate invoices and shall furnish same if required by state government. The invoice must conform to the method described in Section V of this contract.

**Pursuant to KRS 45A.695, no payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee.**

\*Invoice form is available on the Legislative Research Commission, Government Contract Review Committee website: <https://apps.legislature.ky.gov/moreinfo/Contracts/homepage.html>

#### **11.00 Travel expenses, if authorized:**

The Contractor shall be paid for no travel expenses unless and except as specifically authorized by the specifications of this contract or authorized in advance and in writing by the Commonwealth. The Contractor shall maintain supporting documents that substantiate every claim for expenses and shall furnish same if requested by the Commonwealth.

#### **12.00 Other expenses, if authorized herein:**



	<i>Document Description</i>	<i>Page 21</i>
2100000335	COVID 19 Serology Services C2669	

The Contractor shall be reimbursed for no other expenses of any kind, unless and except as specifically authorized within the specifications of this contract or authorized in advance and in writing by the Commonwealth.

If the reimbursement of such expenses is authorized, the reimbursement shall be only on an out-of-pocket basis. Request for payment of same shall be processed upon receipt from the Contractor of valid, itemized statements submitted periodically for payment at the time any fees are due. The Contractor shall maintain supporting documents that substantiate every claim for expenses and shall furnish same if requested by the Commonwealth.

**13.00 Purchasing and specifications:**

The Contractor certifies that he/she will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will he/she attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph and the following paragraph that pertains to conflict-of interest laws and principles, "he/she" is construed to mean "they" if more than one person is involved and if a firm, partnership, corporation, or other organization is involved, then "he/she" is construed to mean any person with an interest therein.

**14.00 Conflict-of-interest laws and principles:**

The Contractor certifies that he/she is legally entitled to enter into this contract with the Commonwealth of Kentucky, and by holding and performing this contract, he/she will not be violating either any conflict of interest statute (KRS 45A.330-45A.340, 45A.990, 164.390), or KRS 11A.040 of the executive branch code of ethics, relating to the employment of former public servants.

**15.00 Campaign finance:**

The Contractor certifies that neither he/she nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of this contract, has contributed more than the amount specified in KRS 121.056(2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this contract. The Contractor further swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

**16.00 Access to Records:**

The state agency certifies that it is in compliance with the provisions of KRS 45A.695, "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The Contractor, as defined in KRS 45A.030, agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this agreement for the purpose of financial audit or program review. The Contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

**17.00 Protest:**

Pursuant to KRS 45A.285, the Secretary of the Finance and Administration Cabinet, or his designee, shall have authority to determine protests and other controversies of actual or prospective vendors in connection with the solicitation or selection for award of a contract.

Any actual or prospective vendor, who is aggrieved in connection with the solicitation or selection for award of a contract, may file protest with the Secretary of the Finance and Administration Cabinet. A protest or notice of other controversy must be filed promptly and, in any event, within two (2) calendar weeks after

	<i>Document Description</i>	<i>Page 22</i>
2100000335	COVID 19 Serology Services C2669	

such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing and shall be addressed to:

**Holly M. Johnson, Secretary**  
Commonwealth of Kentucky  
Finance and Administration Cabinet  
Room 383, New Capitol Annex  
702 Capitol Avenue  
Frankfort, KY 40601

The Secretary of Finance and Administration Cabinet shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

The decision by the Secretary of the Finance and Administration Cabinet shall be final and conclusive.

#### **18.00 Social security: (check one)**

\_\_\_\_\_ The parties are cognizant that the state is not liable for social security contributions, pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

\_\_\_\_\_ The parties are cognizant that the state is liable for social security contributions, pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

#### **19.00 Violation of tax and employment laws:**

KRS 45A.485 requires the Contractor and all subcontractors performing work under the contract to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the Contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to corporate and utility tax, sales and use tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively

To comply with the provisions of KRS 45A.485, the Contractor and all subcontractors performing work under the contract shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the Contractor and all subcontractors performing work under the contract shall be in continuous compliance with the provisions of those statutes, which apply to their operations, and that their failure to reveal a final determination, as described above, or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and their disqualification from eligibility for future state contracts for a period of two (2) years.

Contractor must check one:

\_\_\_\_\_ The Contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

\_\_\_\_\_ The Contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). Attached is a list of such determination(s), which includes the KRS violated, the date of the final determination, and the state agency which issued the final determination.

#### **20.00 Discrimination:**

	<i>Document Description</i>	<i>Page 23</i>
2100000335	COVID 19 Serology Services C2669	

This section applies only to contracts disbursing federal funds, in whole or part, when the terms for receiving those funds mandate its inclusion. Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. During the performance of this contract, the Contractor agrees as follows:

The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity or age. The Contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The Contractor agrees to provide, upon request, needed reasonable accommodations. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

In all solicitations or advertisements for employees placed by or on behalf of the Contractor, the Contractor will state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

The Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding a notice advising the said labor union or workers' representative of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions that may be imposed and remedies invoked as provided in or as otherwise provided by law.

The Contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

	<i>Document Description</i>	<i>Page 24</i>
2100000335	COVID 19 Serology Services C2669	

**Approvals**

This contract is subject to the terms and conditions stated herein. By affixing signatures below, the parties verify that they are authorized to enter into this contract and that they accept and consent to be bound by the terms and conditions stated herein. In addition, the parties agree that (i) electronic approvals may serve as electronic signatures, and (ii) this contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single contract.

**CHFS Cabinet Approval:**

_____	_____
Signature	Title
_____	_____
Printed Name	Date

**Contractor Approval:**

_____	_____
Signature	Title
_____	_____
Printed Name	Date

**CHFS Department Review:**

_____	_____
Signature	Title
_____	_____
Printed Name	Date

**Approved as to form and legality:**

_____
Attorney
_____
Date